Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of	)	
	)	
IDAHO PUBLIC UTILITIES COMMISSION	)	
	)	CC Docket No. 98-221
Petition for Rulemaking Pursuant to	)	
Section 251(h)(2) of the Communications Act	)	
	)	

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation (Sprint), pursuant to the Commission's Public Notice, DA 98-2510 (released December 8, 1998), hereby respectfully submits its reply to the comments filed in the above-captioned proceeding. Sprint agrees with those parties that urge the Commission to grant the petition for rulemaking filed by the Idaho Public Utilities Commission (IPUC).[1]

The IPUC petition raises an issue that is likely to have a significant bearing on whether the goal of the 1996 Telecommunications Act of a fully competitive local telecommunications market can be achieved. Specifically, the question is whether a facilities-based CLEC that is awarded an exclusive contract to provide local telecommunications services to a new residential community, industrial park, building, etc. within an existing ILEC's study area but not heretofore served by the ILEC should be allowed to avoid the obligations imposed by section 251(c) of the Act to share their facilities with other carriers that seek to provide local services to the residents and businesses in such newly-developed areas. Sprint believes that the Commission should prohibit CLECs (and ILECs for that matter) from entering into such exclusive agreements as

[1] Although the IPUC filed a Petition for Declaratory Ruling, the Public Notice herein stated that the Commission would treat the pleading as a Petition for Rulemaking.

inimical to competition.[2] Nonetheless, when confronted with an "exclusive contract," the Commission must act to ensure that other carriers have the ability to access such facilities by subjecting the CLEC to the requirements of Section 251(c) of the Act. Otherwise, new local carrier monopolies will be created, albeit on a smaller scale perhaps than the monopolies enjoyed by the ILECs prior the passage of the 1996 Telecommunications Act. Certainly, when Congress eliminated the ability of the States to grant exclusive local exchange franchises to ILECs, it did not intend to endow private parties such as developers and building owners with the authority to create such monopolies.

On the contrary, Section 251(h)(2) gives the Commission the authority to prevent the creation of these new "privately-granted" monopolies. The provision enables the Commission to treat a competitive local exchange carrier or class thereof that obviously does not come within the definition of an ILEC set forth in Section 251(h)(1) as an incumbent local exchange carrier. To do so, the Commission must find that such local exchange carrier or class of carriers (1) "occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a [Section 251(h)(1)] carrier..."; (2) "has substantially replaced" a Section 251(h)(1) ILEC; and (3) "such treatment is consistent with the public interest...." As several of the commenting parties have explained, these criteria are met when a new facilities-based competitive local exchange carrier is awarded an exclusive contract to provide local exchange service to a new community, building or the like. *See, e.g.,* Comments of

---

[2] *See* Comments of Sprint Corporation filed September 14, 1998 in CC Docket No. 98-146 at 8-9 (*Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*). Several of the parties to the instant proceeding agree that exclusive contracts are problematic. *See* AT&T Comments at 3-4; Electric Lightwave at 4-6; MCI WorldCom (MCIW) at 2-3.

MCIW at 2-4; Ameritech at 3-7; U S West at 5-6; TRA at 8-10.

Such CLECs will, like an ILEC, "occupy a dominant position in the market for telephone exchange service in their respective operating areas, and possess economies of density, connectivity and scale..." *Guam Public Utilities Commission, Declaratory Ruling and Notice of Proposed Rulemaking*, 12 FCC Rcd 6925, 6941 (¶26) (1997) (*Guam PUC*). Indeed, they will have supplanted the ILECs as the providers of local exchange service to all or virtually all of the subscribers in a particular portion of the ILECs' study areas. *Id.* at 6942-43 (¶¶28-31). And, contrary to the public interest, they will pose a threat to the development of a competitive marketplace since exclusivity confers advantages upon facilities-based CLECs comparable to those enjoyed by an ILEC that "make efficient competitive entry quite difficult, if not impossible, absent compliance with the obligations of section 251(c)." *Id.* at 6941 (¶26). In short, treating facilities-based CLECs with exclusive contracts to provide local service to new residential and commercial developments as ILECs would appear to be necessary to help ensure that the unequivocal mandate of the 1996 Telecommunications Act of developing and promoting local competition is achieved. *Id.* at 6948 (¶40).

Finally, if the Commission agrees with the IPUC, Sprint and others that facilities-based CLECs with exclusive contracts to provide local service in newly developed areas should be treated as ILECs, it must also ensure that the interconnection rates charged by such CLECs are reasonable. This is necessary to ensure that such CLECs do not exploit their monopoly control of the local facilities to these developments to force IXCs to interconnect with them at exorbitant

rates.[3] Thus, the Commission should rule that when a CLEC is classified as ILEC for purposes of Section 251 because it is the exclusive provider of local service to a new development within an existing ILEC's study area, such CLEC will be required to charge interconnection rates no higher than the interconnection rates charged by the ILEC. Only by imposing this rule will the Commission be able to prevent the exploitation of bottleneck monopolies by CLECs to the ultimate disadvantage of consumers. *See* Sprint's Reply Comments in CCB/CPD No. 98-63 at 1-9.

Respectfully submitted,

SPRINT CORPORATION

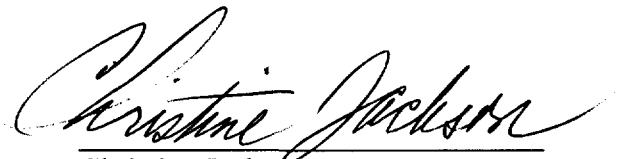
Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036
(202) 828-7438

January 26, 1999

[3] Currently, some CLECs are seeking to charge switched access rates that are as much as 20 times those charged by the ILEC in same study area. *See* Sprint's Comments (filed December 7, 1998) and Reply Comments (filed December 22, 1998) in CCB/CPD No. 98-63 (*Interexchange Carrier Purchases of Switched Access Services Offered By Competitive Local Exchange Carriers*).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply Comments of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 26th day of January, 1999 to the parties on the attached list.



Christine Jackson

January 26, 1999

Conley Ward, Esq.
Kenneth McClure, Esq.
Cynthia Mellillo, Esq.
Attorneys for CTC Telecom, Inc.
Givens Pursley LLP
277 North 6th Street, Suite 200
Boise, Idaho 83701

Benjamin Dickens, Jr., Esq.
Gerard Duffy, Esq.
Michael Adams, Jr., Esq.
Attorneys for CTC Telecom, Inc.
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W.
Washington, D.C. 20037

Cheri Copsey
Deputy Attorney General for the
Idaho Public Utilities Commission
P.O. Box 83720
472 West Washington Street
Boise, ID 83720-5983

Charles Hunter, Esq.
Catherine Hannan, Esq.
Attorneys for TRA
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

Mark Rosenblum, Esq.
Roy Hoffinger, Esq.
AT&T Corp.
295 North Maple Avenue, Room 3249J1
Basking Ridge, NJ 07920

Willkie Farr & Gallagher
Attorneys for Time Warner Telecom
Three Lafayette Centre
1155 21st Street, N.W., 6th Floor
Washington, D.C. 20036

Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

International Transcription Service
1919 M Street, N.W., Room 246
Washington, D.C. 20554

Kecia Boney, Esq.
MCI Worldcom, Inc.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Robert Tanner, Esq.
Mark Trinchero, Esq.
Molly O'Leary, Esq.
Attorneys for Electric Lightwave, Inc.
Davis Wright Tremaine LLP
1155 Connecticut Ave., N./W., Suite 700
Washington, D.C. 20036

Gary Phillips, Esq.
Attorney for Ameritech
1401 H Street, N.W., Room 1020
Washington, D.C. 20005